

November 30, 2010

CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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JUSTIN T. RYAN (SBN 261672)
LAW OFFICES OF JUSTIN T. RYAN
2534 State Street, Suite 409
San Diego, California 92101
Telephone No.: (619) 822-2533
Facsimile No.: (619) 923-2543

Attorney for Plaintiff
HERITAGE PACIFIC FINANCIAL LLC.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISIONAL OFFICE**

In Re:
MARILOU FUENTES MERCADO

Debtor.

HERITAGE PACIFIC FINANCIAL, LLC.
D/B/A HERITAGE PACIFIC FINANCIAL, a
Texas Limited Liability Company,

Plaintiff,

vs.

MARILOU FUENTES MERCADO
Defendants.

Chapter 7
Bankruptcy No. : 2:10-bk-43119

Adversary Case No.:

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
[11 U.S.C. §523(a)(2)(A); 11 U.S.C.
§523(a)(2)(B)]**

DATE: See Summons

**COMPLAINT TO DETERMINE THE
DISCHARGEABILITY OF DEBT AND FOR JUDGMENT**

Plaintiff, through its attorney, Justin T. Ryan, of Law Offices of Justin T. Ryan, states as follows:

I. PARTIES AND JURISDICTION

1 1. This is an adversary proceeding in bankruptcy brought by Heritage Pacific
2 Financial, LLC. dba Heritage Pacific Financial pursuant to 11 U.S.C. § 523.

3 2. Defendant filed a Chapter 7 bankruptcy petition on September 01, 2010.

4 3. Jurisdiction is vested in this proceeding pursuant to 28 U.S.C. § 157, 28 U.S.C.
5 §1334, AND 11 U.S.C. § 523; this matter is a core proceeding.

6 4. Plaintiff is a creditor of defendant. Plaintiff is the assignee and current owner
7 and/or holder of Defendant's loan and related mortgage note.

8 **II. FIRST CLAIM FOR RELIEF**

9 **False Pretenses, False Representation or Actual Fraud**

10 **[11 U.S.C. § 523(a)(2)(A); 11 U.S.C. §523(a)(2)(B)]**

11 5. Plaintiff re-alleges and incorporates by reference the allegations set forth in
12 paragraphs 1 through 4, above.

13 6. In an effort to obtain funds to purchase real property, Defendant applied for and
14 obtained a loan bearing Loan No. XXXXX8811.

15 7. Defendant utilized the aforementioned loan, creating a balance due and owing on
16 this loan of \$138,199.34 including interest as of the date the bankruptcy petitioner was filed.

17 8. In an effort to obtain funds to purchase her property, Defendant caused to have
18 completed on her behalf, a Uniform Residential Loan Application, otherwise known as a 1003
19 Form, which Defendant executed and signed.

20 9. On the Uniform Residential Loan Application, Defendant certified the accuracy
21 of the information contained therein and consented to the verification and re-verification of the
22 information contained therein.

23 10. Among the information provided and certified by Defendant in her Uniform
24 Residential Loan Application, Defendant was required to certify information regarding her
25 current employer, statements of her gross monthly income, and to certify that her intended to use
26

1 the loan proceeds to purchase real property which Defendant intended to use as her primary
2 residence.

3 11. In furtherance of her effort, because Defendant knew that her then current
4 income was insufficient to support the approval of the loan and/or in an effort to secure the more
5 favorable primary-residence financing rate, Plaintiff is informed, believes and thereon alleges
6 that Defendant:

7 a) Provided, prepared, caused to be prepared, false loan applications, which
8 misstated her employment, income and/or intended use of the property as a primary residence;

9 b). Certified a false loan application, which misstated her employment income
10 and/or intended use of the property as a primary residence; and

11 c). Caused her agents to submit to lenders a false loan application and other loan
12 related documents

13 12. The lender did not know, and had no reason to know, that the information and
14 documentation provided by Defendant in, and in conjunction with, her loan applications was
15 false, and in reliance on the information and documentation provided by Defendant to the lender
16 therein approved the loan.

17 13. Defendant executed a promissory note in favor of her initial lender, its
18 successors, transferees, and assigns (collectively hereinafter "LENDER").

19 14. The proceeds of the loan, as referenced in the promissory note, were to be used by
20 Defendant in the purchase or refinance of the property described therein. In exchange,
21 Defendant agreed and promised to pay Lender according to the mutually agreed upon terms and
22 conditions more particularly described in the promissory notes.

23 15. At the time of the execution of the loan, Defendant failed to disclose to Lender
24 that she did not and would not have been able to earn the amount of income as represented on the
25 loan applications.

26 16. Lender fully performed, and Defendant acquired title to the property.
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1 17. The promissory note was duly assigned by the original lender and/or its assignees
2 to Plaintiff, who is the current owner and/or holder of Defendant's Loan and related mortgage
3 note.

4 18. Defendant has defaulted on her obligations to re-verify the information contained
5 in their Uniform Residential Loan Application. Despite Plaintiff's attempts to secure
6 information from Defendant to re-verify the information contained in her loan application,
7 Defendant has failed and/or refused to comply with Plaintiff's requests.

8 19. By reason of the foregoing, Defendant obtained money from Lender through false
9 pretenses, false representations and actual fraud.

10 20. Defendant, therefore, had a specific intent to defraud Lender by accepting the
11 benefits of the financing without ever intending to repay the same.

12 21. Defendant's actions constitute material misrepresentations of the facts.

13 22. Defendant intended for Lender to rely on those misrepresentations.

14 23. Lender did rely upon Defendant's misrepresentations of repayment and was
15 induced to lend money to Defendant by those misrepresentations.

16 24. Lender reasonably relied on Defendant's misrepresentations.

17 25. As a result of Defendant's conduct, Plaintiff has suffered damages at a minimum
18 in the amount of \$138,199.34 plus interest and reasonable attorney fees.

19 Pursuant to 11 USC § 523(a)(2), Defendant should not be granted a discharge of this debt
20 to the Plaintiff in the amount of \$138,199.34 plus interest and reasonable attorney fees.

21
22 **III. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays that this Court grant the following relief:

24 1. A monetary judgment against Defendant in the amount of \$138,199.34, plus
25 accrued interest at the contractual rate, plus, additional interest at the contractual rate, which will
26 continue to accrue until the date of judgment herein;
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1 2. An order determining that such debt is non-dischargeable under 11 USC §
2 523(a)(2);

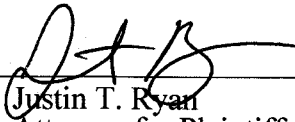
3 3. An order awarding Plaintiff its attorneys' fees and costs incurred herein; and

4 4. An order awarding Plaintiff such additional relief as this Court deems just and
5 equitable.

6
7 Dated: November 30, 2010

8 **Respectfully Submitted,**
9 **LAW OFFICES OF JUSTIN T. RYAN**

10
11 By: _____


Justin T. Ryan
Attorney for Plaintiff
Heritage Pacific Financial, LLC.
dbaHeritage Pacific Financial